

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GUSTAVO ORDUNO HERNANDEZ,
MARIA MAGDALENA
CASTANADA ROSALES,
VALENTINA ORDUNO
CASTANEDA, RAFAEL ORDUNO
CASTANEDA

Plaintiffs,

vs.

TODD LYONS, Acting Director, U.S.
Immigration and Customs
Enforcement, in his official capacity as
well as successors and assigns, KRISTI
NOEM, Secretary for the U.S.
Department of Homeland, in her
official capacity as well as successors
and assigns,

Defendants.

CASE NO: 1:25-cv-03081-RLP

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING
ORDER

BEFORE THE COURT is Plaintiff Gustavo Orduno Hernandez's Motion for
Temporary Restraining Order. ECF No. 4. The matter was considered without oral
argument on an emergency basis. According to the motion, Mr. Hernandez is

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1 currently in custody of Immigration and Customs Enforcement (ICE) in Yakima,
2 Washington, and faces imminent transfer to Tacoma, Washington and removal from
3 the United States pursuant to a removal order which is pending appeal. Mr.
4 Hernandez seeks a temporary restraining order preventing Defendants from
5 effectuating or requiring his removal from the United States while appeal of his
6 removal order is pending. For the reasons set forth below, the emergency motion for
7 a temporary restraining order, ECF No. 4, is DENIED.

8 BACKGROUND

9 According to the Complaint, Mr. Hernandez, his partner, Maria Magdalena
10 Castanada Rosales, and their two children filed I-89 applications for Asylum and For
11 Withholding of Removal with the Immigration Court in Seattle, Washington. ECF
12 No. 1. On April 10, 2025, the Plaintiffs' I-589 applications were denied and they
13 were ordered removed from the United States. *Id.* Plaintiffs' May 19, 2025 appeal
14 of the removal order was accepted for review by the Board of Immigration Appeals
15 (BIA). *Id.* The appeal is currently pending. *Id.*

16 On June 4, 2025, Mr. Hernandez reported as scheduled to his local ICE center
17 in Yakima, Washington. Although Mr. Hernandez provided documentation of his
18 pending BIA appeal, according to the Complaint he was detained for processing for
19 "immediate" removal from the United States. *Id.* Ms. Rosales and the other Plaintiffs
20 were not detained. *Id.*

1 On the same date, the Plaintiffs filed a petition for writ of habeas corpus and
2 for declaratory and injunctive relief. They ask the Court to assume jurisdiction over
3 this matter pursuant to 28 U.S.C. §§ 1331 and 2241 and seek an order directing
4 Defendants to show cause why the writ of habeas corpus should not be granted; a
5 declaration that Mr. Herndandez is being unlawfully detained in violation of federal
6 law and the Due Process Clause of the Fifth Amendment; declaration that their
7 removal orders are not final for purposes of enforcement while their appeal is
8 pending before the BIA; preliminary and permanent injunctive relief enjoining the
9 Defendants from removing the Plaintiffs from the United States while their BIA
10 appeal is pending; and reasonable attorney's fees and costs pursuant to the Equal
11 Access to Justice Act, 28 U.S.C. § 2412.

12 Mr. Hernandez now requests an emergency temporary restraining order
13 preventing Defendants from removing him from the United States while his removal
14 order appeal is pending before the BIA. ECF No. 4.

15 LEGAL STANDARD

16 “The court may issue a temporary restraining order without written or oral
17 notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or
18 a verified complaint clearly show that immediate and irreparable injury, loss, or
19 damage will result to the movant before the adverse party can be heard in
20 opposition; and (B) the movant's attorney certifies in writing any efforts made to
give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

1 The purpose of a temporary restraining order is to preserve the status quo and
2 prevent irreparable harm until a hearing may be held on the propriety of a
3 preliminary injunction. *Reno Air Racing Assoc., Inc. v. McCord*, 452 F.3d 1126,
4 1131 (9th Cir. 2006). The standard for issuing a temporary restraining order is the
5 same as the standard for issuing a preliminary injunction. *See New Motor Vehicle*
6 *Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is “an
7 extraordinary remedy that may only be awarded upon a clear showing that the
8 plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,
9 24 (2008).

10 The proper legal standard for preliminary injunctive relief requires a party to
11 demonstrate: (1) that he is likely to succeed on the merits, (2) that he is likely to
12 suffer irreparable harm in the absence of preliminary relief, (3) that the balance of
13 equities tips in his favor, and (4) that an injunction is in the public interest.
14 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555
15 U.S. at 20). These four factors apply whenever a preliminary injunction is sought.
16 *Winter*, 555 U.S. at 20; *see All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135
17 (9th Cir. 2011) (“a showing on all four prongs” is required).

18 ANALYSIS

19 Mr. Hernandez contends all four factors are present and support granting of a
20 temporary restraining order. ECF No. 4. Defendants argue there is no risk of
irreparable harm and therefore the TRO should not be granted. ECF No. 10 at 4.

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1 Mr. Hernandez contends he faces irreparable harm through deprivation of
2 constitutional rights and “immediate, unlawful, deportation.” ECF No. 4 at 5. He
3 argues he is entitled to due process in the form of BIA review of his appeal of his
4 removal order. According to Mr. Hernandez, unlawful removal would violate his
5 due process rights, which is an immediate, irreparable injury. *Id.* Additionally, Ms.
6 Rosales alleges immediate and irreparable harm will occur to the family emotionally
7 and financially. ECF No. 6 at 8.

8 In response, the Government contends there is no immediate risk of
9 irreparable harm because Defendants have notified Plaintiffs that “they will provide
10 the exact relief that the motion for TRO requests.” ECF No. 10 at 2. Attached to the
11 Government’s response is the Declaration of Chris Hubbard, a deportation officer
12 employed by the United States Immigration and Customs Enforcement, Office of
13 Enforcement and Removal Operations (ERO), at the Northwest ICE Processing
14 Center in Tacoma, Washington. ECF No. 10-1. Mr. Hubbard indicates that he is
15 familiar with Mr. Hernandez’s case and that after Mr. Hernandez was detained on
16 June 4, 2025, he was transferred to the ICE processing center in Tacoma on the same
17 day. *Id.* Mr. Hubbard asserts that “ERO will not remove [Mr. Hernandez] while the
18 appeal with the Board is pending.” *Id.* at 2. Mr. Hubbard further states that Mr.
19 Hernandez would only be removed if he exhausts his remedies and does not obtain
20 relief. *Id.* According to the government, because Mr. Hernandez does not face an

1 immediate risk of removal, he is not facing the type of irreparable injury required for
2 an emergency temporary restraining order.

3 The Court concludes that based on Mr. Hubbard's Declaration, there is no risk
4 of irreparable harm from violation of due process in the form of deportation while
5 Mr. Hernandez's BIA appeal of his removal order is pending. Mr. Hernandez
6 contends this "does not provide the necessary legal assurance to render the Motion
7 for TRO moot." ECF No. 9 at 4. However, the Court notes that Mr. Hernandez's
8 attorney's Amended Certificate in support of filing the TRO indicates that counsel
9 for ICE also confirmed that Mr. Hernandez would not be removed while his appeal
10 was pending. ECF No. 9 at 3. As to any alleged irreparable harm caused by Mr.
11 Hernandez's detention, the matter of his detention is not before this Court on this
12 motion for emergency TRO. *See* ECF No. 4. Accordingly,

13 IT IS ORDERED that Mr. Hernandez's Motion for Temporary Restraining
14 Order, ECF No. 4, is DENIED.

15 **IT IS SO ORDERED.** The District Court Executive shall enter this order and
16 provide copies to counsel.

17 **DATED** June 9, 2025.

18 
19 REBECCA L. PENNELL
20 United States District Judge